

Attachment 3

Public Street and Utility Maintenance Agreement

**RECORDING REQUESTED BY:
WHEN RECORDED, MAIL TO:**

L. Gerald Hunt, as court-appointed receiver in
*Wachovia Bank v. Downtown Sunnyvale
Residential, et al.*
P.O. Box 827
Danville, California 94526

**FIRST AMENDMENT TO
PUBLIC STREET AND UTILITY MAINTENANCE AGREEMENT**

THIS FIRST AMENDMENT TO PUBLIC STREET AND UTILITY MAINTENANCE AGREEMENT (this "**First Amendment**") is entered into as of the ____ day of _____, 2010, by and between the Sunnyvale Redevelopment Agency, a public body, corporate and politic (the "**Agency**"), and L. Gerald Hunt, as Court-Appointed Receiver in *Wachovia Bank v. Downtown Sunnyvale Residential, et al., Santa Clara Superior Court Case No. 109 CV 153447* ("**Receiver**") for the property of Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company ("**DSMU**"), and Downtown Sunnyvale Residential, LLC, a Delaware limited liability company ("**DSR**") (each a "**Party**" and collectively referred to herein as the "**Parties**").

RECITALS

This First Amendment is based upon the following Recitals:

A. Agency and DSMU entered into that certain Amended and Restated Disposition and Development and Owner Participation Agreement dated February 6, 2007, as amended (the "**ARDDOPA**"), which relates to the redevelopment of certain property located in City of Sunnyvale, California and commonly known as Sunnyvale Town Center (the "**Development**");

B. Agency and DSMU entered into that certain Public Street and Utility Maintenance Agreement dated September 28, 2007 and recorded October 1, 2007, as Document No. 19602168, Official Records of Santa Clara County, California (the "**Agreement**");

C. DSMU commenced construction of portions of the Development pursuant to the ARDDOPA (and other agreements associated with the Development). However, with respect to certain agreements relating to the financing of the Development, foreclosure proceedings were instituted by Wachovia Bank, National Association as Administrative Agent, pursuant to Case No. 109CV153447, Superior Court of the State of California, County of Santa Clara (the "**Receivership Proceeding**");

D. Receiver was appointed receiver for property owned or leased by DSMU and DSR by the Superior Court of California, County of Santa Clara pursuant to an Order appointing the Receiver entered as of October 5, 2009 and has authority to enter into this First Amendment;

E. Concurrently herewith, Agency and Receiver are entering into an agreement amending and restating the ARDDOPA in its entirety; and

F. The Parties to this First Amendment desire to amend the Agreement as more fully set forth below.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises and agreements herein contained, the Parties agree as follows:

1. Recitals. The Recitals as set forth above are hereby incorporated into this First Amendment.

2. Defined Terms. Except as otherwise defined or amended herein, capitalized terms used in this First Amendment shall have the meaning ascribed to them in the Agreement.

3. ARDDOPA. The first WHEREAS clause of the Agreement is hereby deleted in its entirety and the following is inserted in place thereof:

WHEREAS, the Agency and Operator have entered into that certain 2010 Amended Disposition and Development and Owner Participation dated as of July __, 2010 (as may be subsequently amended, supplemented or restated from time to time, the "**2010 ADDOPA**"), pursuant to which the Operator shall construct certain retail, residential, public, and commercial space (the "**Development**").

All references in the Agreement to the ARDDOPA shall be deemed to refer to the 2010 ADDOPA as defined above.

4. OREA. The second WHEREAS clause of the Agreement is hereby deleted in its entirety and the following is inserted in place thereof:

WHEREAS, the Macy's Department Stores, Inc., an Ohio corporation (now known as Macy's West Stores, Inc.), Target Corporation, a Minnesota corporation, Operator and Agency have entered into that certain Operation and Reciprocal Easement Agreement dated October 28, 2008, and recorded October 30, 2008, as Document No. 20033381, Official Records of Santa Clara County, California, as amended by that certain First Amendment to Operation and Reciprocal Easement Agreement dated June 15, 2010, and recorded July 6, 2010, as Document No. 20763325, Official Records of Santa Clara County, California, (as may be subsequently amended, supplemented or restated from time to time, the "**OREA**").

All references in the Agreement to the OREA (including references to the undefined term "New OREA") shall be deemed to refer to the foregoing definition.

5. Operator Notice Address. Section 18 of the Agreement is hereby amended to delete the address for Operator set forth therein and to replace such address with the following:

L. Gerald Hunt, Receiver
c/o Quattro Realty Group, LLC
390 Railroad Avenue, Suite 200
Danville, CA 94526
Tel: (925) 314-2712
Fax: (925) 314-2701

6. Effective Date. This First Amendment is effective as of May 14, 2010.

7. Ratification. Except as specifically amended above, the terms and provisions of the Agreement remain in effect.

8. Authority. Each Party represents and warrants to each other Party that the person signing on behalf of such Party has been duly authorized to enter into this First Amendment.

9. Counterparts. This First Amendment may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument.

10. Limitation on Liability. The Parties agree that the Receiver is executing this First Amendment on behalf of DSMU solely in his capacity as Court-Appointed Receiver in the case of *Wachovia Bank v. Downtown Sunnyvale Residential, et al.*, Santa Clara Superior Court Case Number 109CV153447 and the Parties agree that Section 35 of the Order Appointing Receiver applies to this First Amendment. Section 35 provides as follows:

The Receiver and his related entities (including, but not limited to, the Quattro Realty Group and its managing members Bradley N. Blake, Michael Parker and Bradley Griggs), shall bear no personal liability for any actions or omissions in conformity with the provisions of this Order, and any future orders pertaining to this Receivership.

The Parties agree that the Receiver shall have no personal liability for any claims under this First Amendment, *provided, however*, that nothing herein shall exempt the estate administered by the Receiver pursuant to Receivership Proceeding from any such claim.

AGENCY:

SUNNYVALE REDEVELOPMENT AGENCY

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

State of California)

County of)

On _____, 2010 before me, _____,

Notary Public (here insert name and title of the officer), personally appeared,

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of)

On _____, 2010 before me, _____,
Notary Public (here insert name and title of the officer), personally appeared,
_____, who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

RECEIVER:

L. Gerald Hunt, as Court-Appointed
Receiver In *Wachovia Bank v.*
Downtown Sunnyvale Residential, et. al

State of California)
County of)

On _____, 2010 before me, _____,
Notary Public (here insert name and title of the officer), personally appeared, L. Gerald Hunt, as
Court-Appointed Receiver in *Wachovia Bank v. Downtown Sunnyvale Residential, et al.*, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**CONSENT AND SUBORDINATION
TO
FIRST AMENDMENT TO
PUBLIC STREET AND UTILITY MAINTENANCE AGREEMENT**

This Consent and Subordination is made by WELLS FARGO BANK, N.A., a national banking association, as successor-by-merger to Wachovia Bank, National Association, a national banking association, on behalf of itself and Bank of America, N.A., a national banking association, as lenders ("**Administrative Agent**") with respect to the foregoing First Amendment to Public Street and Utility Maintenance Agreement (the "**First Amendment**") dated as of even date herewith between Sunnyvale Redevelopment Agency, a California public body, corporate politic, and L. Gerald Hunt as court-appointed receiver in *Wachovia Bank v Downtown Sunnyvale Residential, et al* for the property of Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company ("**DSMU**") and Downtown Sunnyvale Residential, LLC, a Delaware limited liability company ("**DSR**"). Administrative Agent is the holder of the following security instruments (collectively, and together with any and all other documents and/or instruments evidencing or securing the loan evidenced by said note, the "**Mortgage**") encumbering the Sunnyvale Town Center:

Construction Loan Agreement dated August 29, 2007, which is secured, in part, by that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of August 29, 2007, executed by DSMU, as Trustor, for the benefit of Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on August 30, 2007, in the Official Records of Santa Clara County, California as Instrument No. 19570207, as modified by that certain Modification No. 1 to Deed of Trust, dated as of September 28, 2007, by and between DSMU, as Trustor, and Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on October 1, 2007, in the Official Records of Santa Clara County, California as Instrument No. 19602164, as modified by that certain Modification No. 2 to Deed of Trust and Amendment to Absolute Assignment of Lessor's Interest in Leases and Rents ("Modification No. 2"), by and between DSMU, as Trustor, and Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded in the Official Records of Santa Clara County, California as Instrument No. 20033377; Amended and Restated Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated December 31, 2008 executed by DSMU and DSR, as Trustee, for the benefit of Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on January 12, 2009, in the Official Records of Santa Clara County, California as Instrument No. 20093448; Absolute Assignment of Lessor's Interest in Leases and Rents dated as of August 29, 2007, executed by DSMU, as Trustor, for the benefit of Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on August 30, 2007, in the Official Records of Santa Clara County, California as Instrument No. 19570208, as amended by Modification No. 2; and Amended and Restated Absolute Assignment of Lessor's Interest in Leases and

Rents dated as of December 31, 2008, executed by DSMU and DSR, as Trustee, for the benefit of Administrative Agent for itself and as agent for other lenders, collectively, as Beneficiary, which was recorded on January 12, 2009, in the Official Records of Santa Clara County, California as Instrument No. 20093449.

Administrative Agent, on behalf of itself, its successors and assigns, hereby gives all consent necessary under, and hereby subordinates the liens and security interest granted to the First Amendment, with the same force and effect as if the First Amendment had been recorded prior to the making and recording of the Mortgage.

This Consent and Subordination shall be binding upon successors and assigns of Administrative Agent, including the holder at any time of any portion of the indebtedness secured by the Mortgage.

This Consent and Subordination granted herein are expressly limited to the First Amendment and shall not be deemed a consent to or as a waiver of any other conditions or requirements in the Mortgage.

WELLS FARGO BANK, N.A., successor-by-merger to Wachovia Bank, National Association, on behalf of itself and Lenders

By: _____
Name: _____
Its: _____

State of _____)
County of _____)

On July ____, 2010, before me, _____, Notary Public (here insert name and title of the officer), personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature _____

My commission expires _____

First American Title Company

Escrow No.: 274511

(15)

Recording Requested by:

Sunnyvale City Attorney

When Recorded Mail To:

City Attorney's Office
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086

WE HEREBY CERTIFY THIS TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL RECORDED

ON: 10/1/07 INSTRUMENT # 19402148

COUNTY OF: Santa Clara

FIRST AMERICAN TITLE COMPANY
BY: [Signature]

DOCUMENT WILL BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE

No fee for recording per Government Code §27383

[Space Above for Recorder's Use]

PUBLIC STREET AND UTILITY MAINTENANCE AGREEMENT

by and between

SUNNYVALE REDEVELOPMENT AGENCY

A public Body Corporate and Politic

and

DOWNTOWN SUNNYVALE MIXED USE, LLC

A Delaware Limited Liability Company

By Its Manager

RREEF America REIT III Corp. MM

A Maryland Corporation

PUBLIC STREET AND UTILITY MAINTENANCE AGREEMENT

THIS AGREEMENT (the "Agreement") is made as of September 28, 2007 (the "Effective Date"), by and between the SUNNYVALE REDEVELOPMENT AGENCY, a public body corporate and politic (the "Agency"), and DOWNTOWN SUNNYVALE MIXED USE, LLC, a Delaware limited liability company (the "Operator").

WITNESSETH:

WHEREAS, the Operator and the Agency have entered into that certain Amended and Restated Disposition and Development and Owner Participation Agreement dated as of February 6, 2007 (the "ARDDOPA"), pursuant to which the Operator shall construct certain retail, residential, public, and commercial space (the "Development").

WHEREAS, the Operator, the Agency, Sun Town Center Properties, a California corporation, and Target Corporation, a Minnesota corporation, have entered into the Operation and Reciprocal Easement Agreement ("OREA") dated July 27, 1978, which sets forth certain standards regarding the operation and maintenance of the Development, and subsequently amended on September 5, 1980, July 26, 1995, and May 25, 2000, and as may subsequently be revised and superseded by a New OREA subsequent to Closing September 28, 2007.

WHEREAS, a certain portion of the Development that includes the public streets and the public sidewalks on the exterior of the Development is owned by the Agency and is more particularly described in Exhibit A attached hereto (the "Public Street Parcel").

WHEREAS, there are public utility facilities (the "Utility Facilities") on parcels to be owned by Operator as more particularly described in Exhibit B (the "Private Improvement Parcels") pursuant to easements granted to the City of Sunnyvale and other public entities (the "Utility Easements").

WHEREAS, the Operator and the Agency have agreed that the Operator shall be responsible for the operation and maintenance of the Public Street Parcel and Utility Facilities pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. Identification of Property. This Agreement shall affect the Public Street Parcel and the portion of the Private Improvement Parcels where the Utility Easements are located. The improvements that have or will be constructed on the Public Street Parcel and in the Utility Easements are referred to in this Agreement as the "Improvements."

Section 2. Term. The term (the "Term") of this Agreement shall commence on the Effective Date and shall terminate seventy-five (75) years thereafter, unless earlier terminated pursuant to the terms of this Agreement. If, at the end of the Term, the Private Improvement

Parcels are still in use as a shopping center, the Agency and the Operator shall consider in good faith an extension of this Agreement that would provide for the Operator's continued operation and maintenance of the Public Street Parcel and the Utility Facilities.

Section 3. Use.

a. Permitted Uses.

(i) The streets and sidewalks and other facilities located on the Public Street Parcel shall be used in a manner that is consistent with the laws and ordinances governing the use of public streets and sidewalks in the City of Sunnyvale (the "City").

b. Prohibited Uses.

(i) The Operator shall not do or permit to be done in, on or about the Public Street Parcel, nor bring or keep or permit to be brought or kept therein, anything that is prohibited by any insurance policy for the Public Street Parcel, or will materially increase the existing rate of, or cause a cancellation of, or affect any insurance for the Public Street Parcel that Operator is required to maintain pursuant to Section 11.

(ii) The Operator agrees not to knowingly use the Public Street Parcel or permit anything to be done in or about the Public Street Parcel which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Operator agrees promptly to comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Public Street Parcel, excluding structural changes not relating to or affecting the condition, use, or occupancy of the Public Street Parcel, or not related to or affected by Operator's improvements or acts.

c. Use of Utility Facilities. The Utility Facilities shall only be used for the purposes specified in the Utility Easements.

d. Hazardous Materials. Operator agrees that during the Term of this Agreement, Operator shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Public Street Parcel including, but not limited to, Hazardous Material Laws.

Operator further agrees that during the Term of this Agreement, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the Public Street Parcel in violation of any Hazardous Material Laws.

Except as otherwise provided in the ARDDOPA, Operator shall, at its sole cost and expense, be responsible for the removal and/or remediation (as set forth below) of all toxic or hazardous materials brought upon, maintained or caused to be brought onto the Public Street Parcel. Remediation shall include both structural and non-structural work and encompass inspection, monitoring, testing, contesting, making safe, removing, and otherwise dealing with

toxic or hazardous materials. Further, in the event generation, transportation, storage, release, disposal or use of Hazardous Materials in, on, under or about the Public Street Parcel results in (a) contamination of the Public Street Parcel, any soil, subsoil, groundwater, surface water or ambient air, or (b) any loss, injury, damage or contamination of the Public Street Parcel or any other property or injury or death to any persons, then Operator agrees to respond in accordance with the following. Operator agrees (a) to notify Agency immediately of any claim of contamination, contamination, release, loss, injury, damage or death or otherwise, (b) after consultation with and approval by Agency (which approval may be given or withheld in Agency's reasonable discretion), Operator shall, at its sole cost and expense, remove, clean up, repair or revitalize, in full compliance with all Hazardous Material Laws, any resulting contamination, loss, injury, damage or other problem, and (c) to indemnify, defend and hold Agency and City, their board members, officers, agents, servants and employees, harmless for, from and against all resulting claims, suits, actions, causes of action, costs, professional fees, attorneys' fees, liabilities or obligations arising from or connected with any such contamination or loss, injury or damage or otherwise. The provisions of this subsection shall survive termination or expiration of this Agreement and shall continue thereafter.

For the purpose of this Agreement, "Hazardous Materials" means any substance, product, waste, or other material of any nature whatsoever:

- which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. section 1801, et seq. ("HMTA"); the Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. section 2601, et seq. ("TSCA"); the Clean Air Act, 42 U.S.C. section 7401, et seq. ("CAA"); the Clean Water Act, 33 U.S.C. section 1251, et seq. ("CWA"); the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. section 136 et seq. ("FIFRA"); the Atomic Energy Act of 1954 ("AEA") and Low-Level Radioactive Waste Policy Act ("LLRWPA"), 42 U.S.C. section 2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. section 10101 et seq. ("NWPAA"); the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. section 11001 et seq. ("EPCRA"); the California Hazardous Waste Control Act, Health and Safety Code, Division 20, Chapter 6.5, section 25100 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code, Division 20, Chapter 6.6, section 25249.5 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, Health and Safety Code, Division 20, Chapter 6.8, section 25300 et seq.; California Health and Safety Code, Division 20, Chapter 6.95, section 25501, et seq. ("Hazardous Materials Release Response Plans and Inventory"); or the Porter Cologne Water Quality Control Act, California Water Code section 13000, et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to or imposing liability (including, but not limited to, response, removal and remediation costs) or standards of conduct or performance concerning any hazardous, extremely hazardous, toxic, dangerous, restricted, or designated waste, substance or material, as now or at any time hereafter may be in effect, or
- which is explosive, corrosive, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is regulated by any governmental authority (or by executive or judicial order) as a hazardous material; or

- which is or contains oil, gasoline, diesel fuel or other petroleum hydrocarbons; or
- which is or contains polychlorinated biphenyls, asbestos, urea formaldehyde foam insulation, radioactive materials; or
- which is radon gas.

The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Public Street Parcel, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

Hazardous Materials Laws means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Public Street Parcel or any portion thereof.

e. No Charge for Use. Operator shall not impose or permit the imposition of any charge for the use of the Public Street Parcel and Improvements without Agency's consent. In no event shall Operator be entitled to any compensation or reimbursement from the Agency for the services Operator performs and the obligations Developer incurs under this Agreement. If the Agency permits the imposition of a charge, the proceeds thereof shall be used for actual and direct expenses for operating the Improvements and paid to unrelated third parties. The foregoing shall not prevent charging tenants or owners for utility services provided by the Utility Facilities.

Section 4. Taxes.

a. Payment of Taxes. To the extent that Agency or Operator is assessed real or personal property taxes, general and special assessments, or other charges against the Public Street Parcel or the Improvements or personal property thereon, Operator shall pay such taxes, fees, charges and other governmental impositions prior to delinquency and before any fine, interest or penalty shall become due or be imposed by operations of law for their nonpayment.

b. Prorations. All payments required pursuant to Section 4 shall be prorated on a daily basis for the initial year of this Agreement and for the year in which the Agreement terminates.

c. Proof of Compliance. Operator shall furnish to Agency at least twenty (20) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Operator may comply with this requirement by retaining a tax service to notify Agency whether taxes have been paid.

Section 5. Repair, Maintenance and Operation. During the Term of this Agreement, the Operator shall at its own expense operate, repair, and maintain the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating and replacing the same. Such costs and expenses shall include, but not be limited to the costs of insurance premiums, maintenance, repairs and replacements (whether of a capital or non-capital nature), compliance with legal requirements, compliance with the OREA, all utilities, and all public charges, taxes and assessments of any nature whatsoever. Neither the City nor Agency shall be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation, maintenance or replacement of the Public Street Parcel, the Improvements, the Utility Facilities or the Utility Easements during the Term of this Agreement. The standards of operation and maintenance of the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements required under this Agreement shall include those operation and maintenance requirements applying to the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements in the OREA, if any, and the standards of the City generally applicable to other public streets, sidewalks, and utility facilities and easements in Sunnyvale. Operator shall at all times ensure that the provisions of the OREA relating to the operation and maintenance of the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements are met to the extent that they apply. In the event the Operator fails to perform the management, maintenance, repair and operation of the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements as provided herein or otherwise ensure that the applicable operation and maintenance requirements in the OREA are met, the Agency shall notify Operator in writing of such failure to perform, specifying the respects in which it considers the Operator's performance to be unsatisfactory. Upon the failure of the Operator to improve or to commence and diligently proceed to improve such performance within sixty (60) days after such notice, the Agency shall have the right to undertake or cause to be undertaken such management, maintenance, repair and operational activities in the manner provided in the OREA. In such event, the Operator shall promptly upon demand reimburse the Agency for all reasonable costs and expenses incurred by the Agency for such management, maintenance, repair and operational activities.

Section 6. Policing. Operator shall provide adequate security and traffic control for the Public Street Parcel and the Improvements as is necessary to minimize the need of the City to provide routine patrol and traffic control for the Public Street Parcels and is consistent with the OREA. The Operator and Agency do expect that the City's public safety department would respond to emergencies, crimes in progress and other similar events that are beyond the scope of a routine patrol or traffic control. In providing for security and traffic control, Operator shall comply with the standards reasonably promulgated by the City's public safety department. Nothing in this section is intended to prevent the City from engaging in any police or security activities it deems necessary to protect the health, safety or welfare of the City or any person. The parties shall work with the City's public safety department to provide a means for Operator enforcement for minor infractions so as to facilitate Operator's activities under this Section 6.

Section 7. Permits and Licenses. Operator shall, at its own expense, also be responsible for obtaining and maintaining any and all governmental permits, licenses and approvals necessary or desirable with respect to the Public Street Parcel, the Improvements, the Utility Facilities and the Utility Easements.

Section 8. Improvements.

a. Existing Improvements. In accordance with the ARDDOPA, the Operator shall demolish, reconstruct, repair or replace any existing improvements on the Public Street Parcel.

b. By the Operator. In accordance with the ARDDOPA, the Operator shall construct the Improvements. Upon the completion of the Improvements, the Operator may, upon written approval from the Agency, at the Operator's expense, make any addition to or improvements to the Public Street Parcel or Improvements which are consistent with the ARDDOPA and the OREA and do not impair the utility thereof for use as public streets or sidewalks and utility facilities. Any such addition shall be performed diligently and in a first-class workmanlike manner by a licensed contractor after obtaining appropriate permits and approvals (including a building permit) from authorized governmental agencies.

c. By the Agency. The Agency shall have the right during the Term of this Agreement, at its own expense, to make or permit to be made, any addition to or improvements to the Public Street Parcel which are now or may hereafter be permitted by law, to attach fixtures, structures or signs thereto, and to place any personal property on or in the Public Street Parcel.

d. Ownership of Improvements. All Improvements constructed on the Public Street Parcel by Operator shall be owned by the Agency. Any additions or alterations to the Improvements shall automatically become part of the Improvements.

Section 9. Policies and Rules. The Operator shall establish and maintain such general policies, rules and regulations for the repair, management, maintenance, operation and use of the Public Street Parcel consistent with the provisions of this Agreement and the OREA and the standards of the City applicable to other public streets and sidewalks as may be necessary and approved by the Agency. Such policies, rules and regulations must be approved by the Agency which approval shall not be unreasonably withheld.

Section 10. Easements for Construction and Utilities. Agency grants the Operator the right to grant to public entities or service corporations, for the purpose of serving only the Public Street Parcel, rights of way or easements on or over the Public Street Parcel for poles, conduits, or both for telephone, electricity, water, sanitary, or storm sewers or both, and for other utilities and municipal or special district services. Grants made pursuant to this section shall be limited to the Term of the Agreement.

Section 11. Insurance.

a. Obligations of Operator. During the Term of this Agreement, the Operator shall at its expense, procure, carry, and maintain in full force and effect in a form acceptable to Agency insurance coverage by the following policies of insurance:

- (i) Workers' Compensation Insurance, in accordance with the law;
- (ii) Liability Insurance with a minimum combined single-limit coverage of Five Million Dollars (\$5,000,000) on an occurrence basis and Ten Million (\$10,000,000) combined single limit, arising out of or resulting from: (i)

personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the Public Street Parcel or as a result of business or activity at the Public Street Parcel; or (ii) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, including owned, non-owned, and hired automobiles; provided, however, that such insurance may exclude coverage for any claim for injury to person or property arising from the gross negligence or willful misconduct of the Agency or City or their respective officers, employees, agents or contractors; any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party (as defined in Section 25) or in connection with the Public Street Parcel; or any claim that arises solely by reason of the design of the improvements on the Public Street Parcel to the extent that the design has been approved by the City and the design element is one normally approved by the City for public facilities.

- (iii) Property Insurance insuring the Public Street Parcel against loss or damage by a standard all risk policy (excluding flood and earthquake if insurance for those risks is not available at a commercially reasonable rate) in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the Improvements, or should insurance in such amount not be commercially reasonably available, such lesser amount as may be reasonably acceptable to the Agency. Operator shall only be required to maintain property insurance if such insurance is available to Operator. In the event Operator is unable to maintain such insurance, the Agency or City may maintain such insurance or cause such insurance to be maintained. The Operator shall reimburse the Agency for any costs it or the City incurs in connection with this subsection (a)(iii).
- (iv) Any other insurance required by the OREA or reasonably requested the Agency.
- (v) All policies of liability insurance obtained and maintained by Operator in accordance with this section shall name the Agency and the City as additional insureds and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for Agency and City.
- (vi) All insurance provided under this section shall: (a) be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation; and (b) effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California.

- (vii) Operator may use insurance proceeds to fulfill its obligations under Section 12; provided, however, that any proceeds that remain after repair, replacement or reconstruction shall be paid in full to the Agency.

b. Certificates. Certificates of Insurance shall be furnished by Operator to Agency and shall provide that no cancellation, reduction or modification of coverage will occur without thirty (30) days' prior written notice to Agency. In the event Operator does not comply with the requirements of this Section 11, Agency may, at its option, purchase insurance coverage to protect the Agency and the Public Street Parcel and Operator shall reimburse Agency for all reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of amount expended. Acceptance of insurance certificates by Agency shall not limit or eliminate the duties or responsibilities of Operator set forth in this Agreement.

c. Waiver of Subrogation. Operator releases Agency and the City from any claims for damage to any person or to the Public Street Parcel and the building and other improvements in or to the Public Street Parcel that are caused by or result from risks insured against under any insurance policies carried by Operator and in force at the time of any such damage. Operator shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Agency or City in connection with any damage covered by any policy.

Section 12. Damage to the Public Street Parcel and Utility Facilities.

a. Damage or Destruction of Improvements or Utility Facilities. In the event that the Improvements or Utility Facilities are damaged by fire or other casualty or event during the Term of this Agreement, Operator shall at Operator's sole cost, within thirty (30) days, commence and diligently pursue to completion the repair, replacement or reconstruction of the Improvements or Utility Facilities.

b. Damage Near End of Term, No Obligation. Unless the OREA provides otherwise, if at any time during the last six (6) years of the Term there is damage or destruction to the Improvements and the cost to repair such damage makes any repair and restoration economically infeasible as reasonably determined by Operator, Operator may, at Operator's option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Agency of Operator's election to do so within sixty (60) days after the date of occurrence of such damage. In addition, if there is substantial damage or destruction to the Improvements and, under the OREA, neither the Operator, nor the Agency, nor the City has an obligation to repair or replace the Improvements following the damage or destruction, the Operator may, at Operator's option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Agency of Operator's election to do so within sixty (60) days after the date of occurrence of such damage.

Section 13. Assignment of Agreement. Unless otherwise permitted herein, neither this Agreement nor any interest of the Operator herein shall, at any time after the date hereof, without the prior written consent of the Agency, be transferred. A transfer consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise: (i) any assignment, mortgage, pledge, encumbrance, or other transfer of any interest in this Agreement; (i) any occupancy of any portion of the Public Street Parcel by any persons

other than Operator and its employees; and (iii) any changes of ownership in the Operator, including any transfer or fifty percent or more of the interests in Operator including the dissolution, merger, consolidation, or other reorganization of Operator. Notwithstanding the foregoing, the Operator may assign its rights under this Agreement to (i) a lender as security in accordance with Section 21, and (ii) to an entity that is purchasing all or a substantial portion of the retail improvements on the parcels adjacent to the Public Street Parcel, if such assignment is permitted under the ARDDOPA or approved by the Agency.

Section 14. Eminent Domain. If all or part of the Public Street Parcel shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with a threat of exercise of such a right, either party hereto shall have the right at its option to terminate this Agreement as of the date possession is taken by the condemning authority, provided, however, that before Operator may terminate this Agreement by reason of taking or appropriation, the taking or appropriation shall be of such an extent and nature as to substantially handicap or impede use of the Public Street Parcel. In accordance with this agreement, no award for any partial or entire taking shall be apportioned, and Operator hereby assigns to Agency any award which may be made in such taking or condemnation, together with any and all rights of Operator now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Agency any interest in or to require Operator to be deemed to give Agency any award made to Operator for the taking of personal property and fixtures belonging to Operator and/or for the interruption of or damage to Operator's business. No temporary taking of the Public Street Parcel and/or of Operator's rights therein or under this Agreement shall terminate this Agreement or give Operator; any award made to Operator by reason of any such temporary taking shall belong entirely to Operator and Agency shall not be entitled to share therein.

Section 15. Surrender. Upon the termination of this Agreement, the Operator agrees that it shall surrender to the Agency the Public Street Parcel and Improvements in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance except for reasonable wear and tear, and except for any damage to the Public Street Parcel and Improvements caused by casualty or by a taking as a result of eminent domain proceedings.

Section 16. Liens. Operator shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Operator and shall keep the Public Street Parcel free and clear of all mechanics' and materialmen's liens in connection therewith. The Agency shall have the right to post or keep posted on the Public Street Parcel, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Public Street Parcel by Operator. If any such lien is filed, the Agency may, but shall not be required to, upon written notice to Operator, take such action or pay such amount as may be necessary to remove such lien. Operator shall reimburse Agency for all reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of the amount expended.

Section 17. Law Governing. This Agreement shall be governed by the laws of the State of California, subject to the waivers, exclusions and provisions herein contained.

Section 18. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

"AGENCY"

The Sunnyvale Redevelopment Agency
Attn: Executive Director
456 West Olive Avenue
Sunnyvale, California 94086
Telephone: (408) 730-7480
Facsimile: (408) 730-7699

"OPERATOR"

Downtown Sunnyvale Mixed Use, LLC
c/o RREEF America REIT III, Inc.
Attn: David Wilbur
101 California Street, 26th Floor
San Francisco, California 94111
TEL (415) 262-7716
FAX (415) 986-6247

Copy to:

Sand Hill Property Company
c/o Peter Pau and Jeff Warmoth
489 South El Camino Real
San Mateo, California 94402
TEL (650) 344-1500
FAX (650) 344-0652

or at such other address as either party shall later designate for such purpose by written notice to the other party.

Section 19. Waiver. The waiver by either party of any breach by the other of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 20. Default by Operator. If (a) the Operator shall fail to observe or perform any term, covenant or condition contained herein for a period of sixty (60) days after written notice thereof from the Agency to the Operator, or (b) the Operator shall abandon or vacate the Public Street Parcel, or (c) the Operator's interest in this Agreement or any part hereof shall be assigned or transferred without the written consent of the Agency, either voluntarily or by operation of law, or (d) the Operator shall file any petition or institute any proceedings wherein or whereby the Operator asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to the Operator's creditors to effect a composition or extension of time to pay the Operator's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the Operator's debts, or for any other similar relief, then and in any of such events, the Operator shall be deemed to be in default hereunder.

If the Operator should, after notice of such default, fail to remedy any default or commence the correction thereof within sixty (60) days after such notice, or thereafter fails to diligently pursue such correction to completion, then the Agency shall have the right, at its option, without any further demand or notice:

- to terminate this Agreement and to re-enter the Public Street Parcel and eject all parties in possession therefrom, in which case this Agreement shall terminate, and the Operator shall have no further rights or claims hereunder; or
- to continue this Agreement in effect, in which case it may enforce all of its rights and remedies hereunder.

In the event the Agency terminates this Agreement as hereinabove provided, the Agency shall be entitled to pursue all rights and remedies available at law or in equity. The foregoing remedies of the Agency are in addition to and not exclusive of any other remedy of the Agency. Upon terminating, the Operator shall not hinder the Agency or its designee in taking over the operation of the Public Street Parcel and Improvements.

Section 21. Financing.

a. Operator shall have the right at any time and from time to time to assign this Agreement to the holder of one or more mortgages required for any reasonable and customary method of construction or permanent financing of the improvements on property adjacent to the Public Street Parcel that is subject to the ARDDOPA without the Agency's consent, provided that:

- (i) The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Agreement and to all rights and interests of Agency except as provided in this Agreement.
- (ii) Operator shall give Agency prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.

b. Agency shall give any lender, who so requests in writing, an opportunity to cure failures or conditions specified in the Agency's notice of default provided pursuant to Section 20 which cure period shall be coterminous with the one provided to Operator plus such additional time as is reasonably necessary to allow the lender to gain possession of the Operator's rights under this Agreement.

c. The documents evidencing the lender's loan to Operator shall provide that any proceeds from fire or extended coverage insurance for the Improvements shall be used for repair or rebuilding of the Improvements and not to repay part of the outstanding mortgage.

d. The documents evidencing lender's loan to Operator shall contain provisions that all notices of default under the note and mortgage must be sent to Agency and Operator and that Agency shall have the right to cure any default if Operator fails to do so. Agency shall have sixty (60) days in which to cure any default if Operator fails to do so. Neither Agency's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the mortgage if Agency or Operator promptly performs all other provisions of the note and mortgage.

e. On the recording of lender's deed of trust or deeds of trust, Operator shall at Operator's expense, cause to be recorded in the office of the county recorder in Santa Clara County, California, a written request executed and acknowledged by Agency for a copy of all notices of default and all notices of sale under the deed of trust as provided under California Law. Inclusion in the body of lender's deed of trust or deeds of trust of a request for notice having the effect described above shall constitute compliance with this provision.

f. Lender shall not be liable to perform Operator's obligations under this Agreement until the lender acquires Operator's rights by foreclosure. After acquiring Operator's rights by foreclosure, lender shall be liable to perform Operator's obligations only until lender assigns or transfers the Agreement as permitted in Section 13. Lender shall not, however be required to cure Operator's defaults occurring before lender's acquisition of Operator's rights by foreclosure.

Section 22. No Release of Operator. Consent by Agency to any assignment by Operator shall not relieve Operator of any obligation to be performed by Operator under this Agreement, whether occurring before or after such consent or assignment, unless the Agency approves such assignment, and the assignee assumes in writing all obligations of the Operator under this Agreement and the ARDDOPA and Agency approves the form of the written assignment. The consent by Agency to any assignment shall not relieve Operator from the obligation to obtain Agency's express written consent to any other assignment except as herein provided. The acceptance of payment by Agency from any other person shall not be deemed to be a waiver by Agency of any provision of this Agreement or to be a consent to any assignment or other transfer. Consent to one assignment or other transfer shall not be deemed to constitute consent to any subsequent assignment or other transfer.

Section 23. Assignment by Agency. The Agency shall have the right to transfer and assign, in whole or in part, all its rights and obligations under this Agreement and in the Public Street Parcel and in such event such transferee shall be deemed to have assumed such obligations and no further liability or obligation shall thereafter accrue against the Agency under this Agreement.

Section 24. Nondiscrimination. The Operator covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, ancestry, gender, disability or sexual orientation, in the leasing, subleasing, transferring, use, or enjoyment of the Public Street Parcel herein operated nor shall the Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Operators, lessees, sublessees, sub-Operators, or vendees in the Public Street Parcel herein operated.

The foregoing conditions shall not create any rights in Operator that are not otherwise expressly set forth herein.

Section 25. Indemnification. The City and the Agency shall not be liable at any time for any loss, damage, or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Operator, or of anyone holding under the Operator or the occupancy or use of the Public Street Parcel, the Improvements or any part thereof by or under the Operator, or directly or indirectly from any state or condition of the Public Street Parcel or Improvements or any part thereof during the Term of this Agreement except for the willful misconduct or the gross negligence of the City or the Agency.

Notwithstanding anything to the contrary under this Agreement, and irrespective of any insurance carried by the Operator for the benefit of the City and the Agency, the Operator agrees to protect, defend, indemnify and hold the City and the Agency harmless from any and all damages or liabilities of whatsoever nature arising under the terms of this Agreement or arising out of or in connection with the Public Street Parcel or Improvements during the Term of this Agreement. The foregoing indemnity shall survive termination of this Agreement. The foregoing indemnity shall not apply to: (i) any claim for injury to person or property arising from the gross negligence or willful misconduct of the Agency or City or their respective officers, employees, agents or contractors; (ii) to any claim that arises solely by reason of the actions or omissions of an Unrelated Third Party or in connection with the Public Street Parcel or Improvements; or (iii) any claim that arises solely by reason of the design of the improvements on the Public Street Parcel to the extent that the design has been approved by the City and the design element is one normally approved by the City for public facilities. An Unrelated Third Party is a person or entity who is not directly or indirectly an employee, officer, agent, representative, tenant, contractor or subcontractor of the Operator.

Section 26. Certain Covenants of the Operator. Without limiting Operator's other obligations hereunder, Operator shall not do, or permit or authorize others to do any of the following:

- a. Operate or use the Public Street Parcel or Improvements in any manner or for any purposes other than as herein set forth;
- b. Operate or use the Utility Facilities for any purpose other than the purpose specified in the Utility Easements.
- c. Knowingly or intentionally engage in any act which would, to an ordinarily prudent person in the position of Operator, be reasonably foreseeable to cause material damage to the Public Street Parcel;
- d. Abandon the Public Street Parcel during the Term of this Agreement;
- e. Knowingly use or occupy, or knowingly permit the Public Street Parcel or the Utility Easement, or any parts thereof, to be used or occupied, for any unlawful, disreputable or ultra-hazardous use (including the prohibited or unauthorized use, storage or disposal of hazardous material), or operate or conduct the business of the Public Street Parcel in any manner known to constitute or give rise to a nuisance of any kind;

f. Make, authorize or permit any material modifications or alterations to the Public Street Parcel or the Utility Facilities or Utility Easement except as expressly authorized by this Agreement;

g. Do anything inconsistent with, or that will cause a default under the OREA; or

h. Enter into or amend any contract or agreement affecting the Public Street Parcel, the Improvement, the Utility Easement or the Utility Facilities that conflicts in any material respect with the terms of this Agreement or that does not contain an express provision that it will terminate automatically upon the expiration or earlier termination of this Agreement.

Section 27. Attorneys' Fees and Court Costs. In the event that either the Agency or the Operator shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against the other party arising from any default under or violation of this Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

Section 28. Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement, and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by the Agency and the Operator, all with the same force and effect as though the same counterpart had been executed simultaneously by both the Agency and the Operator.

Section 29. Validity. If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions and option provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 30. Binding Effect. This Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 31. No Lease. This Agreement (i) is not a lease and does not grant Operator any real property rights in the Public Street Parcel, and (ii) shall not make Operator an agent for the City or Agency.

Section 32. Estoppel Certificate. Within ten (10) days after delivery of a written request from the Agency to the Operator, the Operator shall execute and deliver to the Agency an estoppel certificate certifying as to such facts with regard to this Agreement and the Public Street Parcel as the Agency may reasonably request from time to time.

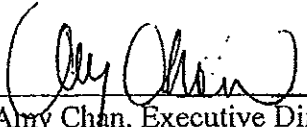
Section 33. Conflict. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the OREA, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

"AGENCY"

SUNNYVALE REDEVELOPMENT
AGENCY
A Public Body Corporate and Politic

By: _____

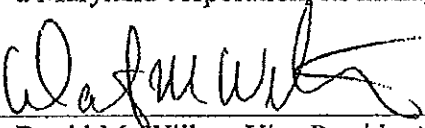

Amy Chan, Executive Director

"OPERATOR"

DOWNTOWN SUNNYVALE MIXED USE, LLC
A Delaware limited liability company

By: RREEF America REIT III Corp. MM
a Maryland corporation, its manager

By: _____


David M. Wilbur, Vice President

ACKNOWLEDGMENTS

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On September 28, 2007, before me, Jeri Stanfield, Notary Public, personally appeared AMY CHAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeri Stanfield (Seal)



STATE OF CALIFORNIA)
)
COUNTY OF Santa Clara

On September 28, 2007 before me, Jeri Stanfield, Notary Public, personally appeared DAVID M. WILBUR, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeri Stanfield (Seal)

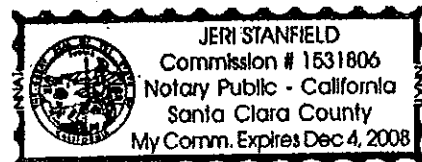


EXHIBIT "A"

Public Street and Utility Maintenance Agreement

Being all of Lot A of Tract No. 9925, entitled "Sunnyvale Town Center", filed
October 1, 2007 in Book 918 of Maps at Pages 45 through 55 inclusive, Records of
Santa Clara County.

MAINTENANCE AREA EXHIBIT

LEGEND

MAINTENANCE OF PUBLIC
FACILITIES INCLUDES ALL AREAS
FROM THE BACK OF CURB TO THE
BUILDINGS ON THE PERIMETER
STREETS, EXCEPT FOR THE
PORTION FRONTING MACY'S
DEPARTMENT STORE.

EXHIBIT A-1

DATE: 9-24-07

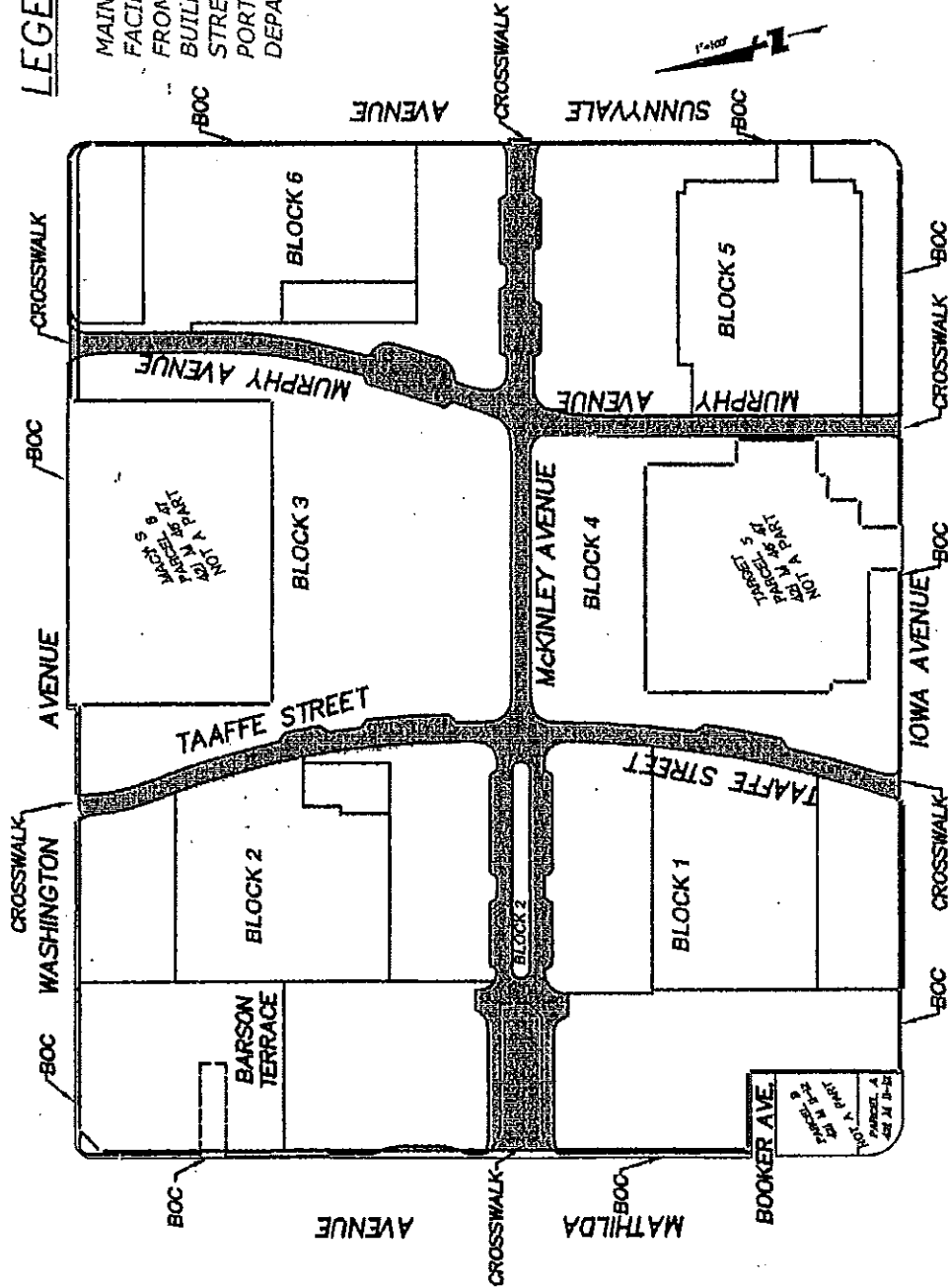
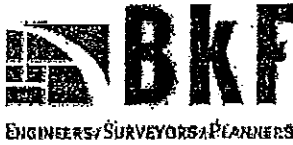


EXHIBIT B

Private Improvement Parcels



September 14, 2007
BKF No. 20046002-32

Exhibit B
Legal Descriptions
of
"Downtown Sunnyvale Mixed Use, LLC" Owned Lots
Tract No. 9925
(Sunnyvale Town Center)

Lot 1, Block 1, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 1, Block 1, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 418 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 2, Block 1, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 2, Block 1, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 418 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 4, Block 1, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 4, Block 1, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 418 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 1, Block 2, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 1, Block 2, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 418 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 2, Block 2, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 2, Block 2, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 819 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 3, Block 2, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 3, Block 2, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 6, Block 2, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 6, Block 2, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 7, Block 2, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 7, Block 2, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 1, Block 3, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 1, Block 3, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 1, Block 4, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 1, Block 4, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 819 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 1, Block 5, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 1, Block 5, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 3, Block 5, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 3, Block 5, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

Lot 2, Block 6, Tract No. 9925

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Being all of Lot 2, Block 6, Tract No. 9925, entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 45 through 55 inclusive, Records of Santa Clara County.

This description was prepared by me or under my direction.

For:

BKF Engineers

Martin B. Parissenti, PE. No. 30747

License expires 3-2008

9-26-07

Dated



Exhibit C
Public Street and Utility Maintenance Agreement

The Operator is responsible for the maintenance of the Improvements located on the Public Street Parcel, and the Utility Facilities located on the portion of the Private Improvement Parcels where the Utility Easements are located, all as defined and set forth in the Public Street and Utility Maintenance Agreement to which this Exhibit C is an exhibit:

1. Streets:
 - a. Pavement
 - b. Striping and pavement markings
 - c. Cross-walks
 - d. Pavers
 - e. Base course, sub-base, and subgrade under pavements
2. Sidewalks:
 - a. Decorative pavement,
 - b. Access ramps and detectable warning surfaces therein
 - c. Base course, sub-base, and subgrade under sidewalks
 - d. Street furniture (bike racks, bike lockers, trash receptacles)
 - e. Cross walk lighting system (lights embedded in the pavement), if any
3. Curbs, gutters, and decorative pavement of medians
4. Concrete curbs and gutters and base course therefore
5. Storm drain systems
 - a. Main line pipes
 - b. Laterals to inlets and on-site drains (including trench and slot drains)
 - c. Inlets including the structure and hardware
 - d. Manholes and related covers and hardware
 - e. Storm water treatment units
 - f. Any filters, screens, or flow controls
6. Sanitary sewer systems
 - a. Main line pipes
 - b. Laterals to the point of clean-outs typically at the property line
 - c. Manholes and related covers and hardware
 - d. Any pre-treatment facilities including equipment for removing fats, oils & greases such as grease interceptors.
7. Domestic and fire suppression water system
 - a. Water pipes
 - b. Water valves
 - c. Enclosures for valves and meters
 - d. Backflow preventers (reduced pressure and double check detection type)
8. Street landscaping

Exhibit C
Public Street and Utility Maintenance Agreement

- a. Street trees including structural soil therefor
- b. Street tree well hardware including grates
- c. Root barriers
- d. Other landscaping including turf, shrubs, and other plant materials
- e. Irrigation systems for landscaping in public streets including timers, controllers, piping, valves, heads, conduits, power supply and backflow preventers.

9. Street lighting

- a. Street light fixtures and standards (poles)
- b. Conductors and conduits
- c. Pull boxes
- d. Electrical receptacles at each street tree
- e. "Twinkle lighting" systems
- f. Photocells, transformers, and/or other electrical equipment that is a part of the street lighting system or the street tree lighting system

10. Street appurtenances

- a. Street monuments boxes including survey markers therein.
- b. Grease interceptors and drain lines thereto (if any)
- c. bollards, , kiosks, drinking fountains, planter pots, signage and poles therefore (if any)

Attachment 4

Penney's Structure Amendment

First American Title Company

Escrow No.: 274511

DOCUMENT: 19602169



Pages: 4

Fees... 16.00
Taxes...
Copies...
AMT PAID 16.00

(11)

Recording Requested by:

Sunnyvale City Attorney

When Recorded Mail To:

**City Attorney's Office
City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086**

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Title Company

**RDE # 008
10/01/2007
3:15 PM**

DOCUMENT WILL BE RETURNED TO NAME & ADDRESS IDENTIFIED ABOVE
No fee for recording per Government Code §27383

[Space Above for Recorder's Use]

**FIRST AMENDMENT TO OPERATION AND MAINTENANCE AGREEMENT
("Penney's Structure Agreement")**

by and between

CITY OF SUNNYVALE
A Charter City

and

DOWNTOWN SUNNYVALE MIXED USE, LLC
A Delaware Limited Liability Company

By Its Manager
RREEF America REIT III Corp. MM
A Maryland Corporation

**FIRST AMENDMENT TO OPERATION AND MAINTENANCE AGREEMENT
("Penney's Structure Agreement")**

This First Amendment is made as of September 28, 2007 and is an amendment to the Operation and Maintenance Agreement (the "Penney's Structure Agreement") dated as of April 13, 2000 by and between the City of Sunnyvale, a charter city ("City") and Sunnyvale LLC, a California limited liability corporation ("Original Operator") with reference to the following:

A. By assignment from other entities, Downtown Sunnyvale Mixed Use, LLC, a Delaware limited liability company ("Operator"), has been assigned the rights of the Original Operator under the Penney's Structure Agreement.

B. The City and Operator desire to make certain changes to the Penney's Structure Agreement in order to facilitate the Operator's development of the property adjacent to the parking structure that is the subject of the Penney's Structure Agreement.

THEREFORE, City and Operator agree as follows:

1. Assumption of Obligations. Operator hereby assumes the rights and obligations of the "Operator" under the Penney's Structure Agreement. The City hereby consents to the assignment to Operator of the rights and obligations of the "Operator" under the Penney's Structure Agreement.

2. Scope of Agreement. Operator and City agree that, as set forth in the Amended and Restated Disposition and Development and Owner Participation Agreement dated February 6, 2007 (the "ARDDOPA") between the Operator and the Sunnyvale Redevelopment Agency ("Agency"), the Penney's Structure Agreement shall also apply to Tract 9925, Block 5, Lot 2, as shown on the New Final Map (as defined in the ARDDOPA), prior to the Closing, as defined in the ARDDOPA.

3. Amendment of Section 2. Section 2 of the Penney's Structure Agreement shall be amended so it reads in its entirety as follows:

"Section 2 Term. The term of the Agreement (the "Term") commenced upon the opening in 2001 of the public parking structure as designated on Tract 9925, Block 5, Lot 2, to the public for parking and shall continue for a term (i) coterminus with the term of the "Public Parking Ground Lease" that Operator and the Agency will enter into pursuant to the Amended and Restated Disposition and Development and Owner Participation Agreement dated February 6, 2007 ("ARDDOPA") by and between the Agency and Operator, or (ii) if, pursuant to Section 8.05 of the ARDDOPA, the Public Parking Ground Lease is terminated and replaced by the "Public Parking Maintenance Agreement" between the Agency and Operator, coterminus with the term of the Public Parking Maintenance Agreement. If the Closing (as defined in the ARDDOPA) never occurs and, as a result, the Agency and the Operator do not enter into the Public Parking Ground Lease, the Term of this Agreement shall be fifty (50) years from January 1, 2001."


4. No Other Agreement. In all other respects, the Penney's Structure Agreement remains in full force and effect and unamended.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Operation and Maintenance Agreement ("Penney's Structure Agreement") this 28 day of September, 2007.

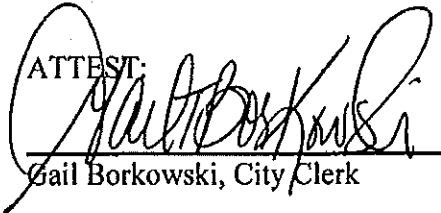
"CITY"

CITY OF SUNNYVALE

By


Amy Chan, City Manager

ATTEST:


Gail Borkowski, City Clerk

APPROVED AS TO FORM:

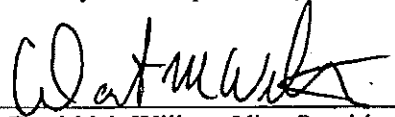

David Kahn, City Attorney

"ORIGINAL OPERATOR"

DOWNTOWN SUNNYVALE MIXED USE, LLC
A Delaware limited liability company

By: RREEF America REIT III Corp. MM
a Maryland corporation, its manager

By:


David M. Wilbur, Vice President

ACKNOWLEDGMENTS

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

On September 28, 2007, before me, Jeri Stanfield, Notary Public, personally appeared AMY CHAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeri Stanfield (Seal)



STATE OF CALIFORNIA)
)
COUNTY OF Santa Clara

On September 28, 2007 before me, Jeri Stanfield, Notary Public, personally appeared DAVID M. WILBUR, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Jeri Stanfield (Seal)



OPERATION AND MAINTENANCE AGREEMENT

THIS AGREEMENT (the "Operation and Maintenance Agreement") is made as of April 13, 2000, by and between the CITY OF SUNNYVALE, a chartered city and municipal corporation, duly organized and existing under and by virtue of the Constitution of the State of California (the "City"), and SUNNYVALE, LLC, a California limited liability company, (the "Operator"):

WITNESSETH:

1. WHEREAS, the Operator, the City and the Redevelopment Agency of the City of Sunnyvale (the "Agency") have entered into that certain Agreement for Exchange of Properties dated as of April 13, 2000 (the "Swap Agreement"), whereby among other things, the Operator shall convey to the Agency, two parcels of real property, one of which is more particularly described in Exhibit A attached hereto and referred to herein as "Parcel E", and one of which is more particularly described in Exhibit B attached hereto and referred to herein as "Parcel F", and the Agency shall acquire both Parcel E and Parcel F from the Operator;
2. WHEREAS, Parcels E and F are subject to that certain Construction, Operation and Reciprocal Easement Agreement (Sunnyvale, California) by and among Sunnyvale Towncenter Associates (Operator's predecessor in interest), the Agency, Sun Towncenter Properties Corp., Gabsward Properties Corporation and J.C. Penney Properties, Inc., date as of March 1, 1978, as amended from time to time (the "REA");
3. WHEREAS, pursuant to that (i) certain Public Improvements Acquisition and Development Agreement ("PIADA") executed as of April 13, 2000, by and between the Agency and the Operator, and (ii) the Special Development Permit issued to the Operator by the City, the Operator has agreed to construct public parking structures on each of Parcel E and Parcel F (collectively, the "Parking Facilities");
4. WHEREAS, pursuant to that certain First Amendment to Facility Lease by and between the City and the Agency (the "Facility Lease"), the Agency will have leased Parcel E and Parcel F to the City;
5. WHEREAS, pursuant to that certain Agreement for Sublease, Operation and Maintenance of Parking Facilities dated as of March 1, 1978, as amended from time to time (the "Sublease"), the Operator subleases certain public parking structures (the "Other Shopping Center Parking Structures") from the City;
6. WHEREAS, the Operator has a substantial economic interest in the success of the shopping center (the "Shopping Center") governed by the REA and therefore the Operator and the City have agreed that the Operator shall be responsible for the operation and maintenance of the Parking Facilities pursuant to the terms and conditions set forth herein.

7. NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1 Agreement of Premises. The term "the Premises" shall be defined to mean the Parking Facilities.

Section 2 Term.

A. Initial Term. The initial term (the "Initial Term") of this Agreement shall commence on the date that either Parcel E or Parcel F is opened to the public as a public parking facility and shall thereafter be coterminous with the initial term of the Sublease, unless sooner terminated as provided herein.

B. Extended Term. At the end of the Initial Term, the City may renew this Agreement with the Operator, so long as it has, in accordance with the provisions of Section 2 of the Sublease, extended the term of the Sublease or entered into a new management agreement (a "Subsequent Management Agreement") with Operator for the management of the Other Shopping Center Parking Structures, in which case the term of this Agreement shall be extended to be coterminous with the extended Sublease term or the term of such Subsequent Management Agreement, unless sooner terminated as provided herein.

C. Relationship to Sublease. This Agreement shall automatically terminate upon the termination or expiration of the Sublease or any Subsequent Management Agreement for any reason whatsoever.

D. No Option to Purchase Premises. Neither Operator nor the REA Parties shall have any option to purchase the Premises.

Section 3 Use. The Premises shall be used, managed and operated by the Operator hereunder to provide parking on a non-exclusive basis for members of the general public and for such other purposes as are compatible and permitted pursuant to the REA. Notwithstanding the foregoing, the Agency shall be entitled to use the Parking Facilities for any reason whatsoever (and to direct the Operator to operate the Parking Facilities in accordance with its chosen use) including charging for parking or using the Parking Facilities for purposes other than public parking; provided, however, that in the event the Agency ceases to use the Parking Facilities for public parking purposes the Agency acknowledges that it will at all times be subject to the public parking requirements applicable to the Agency of the then-applicable municipal code of the City of Sunnyvale to the extent then applicable to the loss of public parking represented by the Parking Facilities.

Section 4 Protest of Assessment. Subject to the prior reasonable approval of the City, Operator and the REA Parties may, at their sole expense, take appropriate actions including court action to protest and secure a reduction of the assessment of ad valorem taxes made by the County Assessor of Santa Clara County, if any, so long as the Premises are not in danger of being forfeited as a result of such actions.

Section 5 Repair, Maintenance and Operation. The Operator shall at its own expense, operate, repair and maintain, during the term of this Operation and Maintenance Agreement, the Premises in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating the same (including the costs of insurance premiums, maintenance, repairs and replacements (whether of a capital or non-capital nature), compliance with the REA and other documents of record against the Premises, compliance with legal requirements, all utilities, and all public charges, taxes and assessments of any nature whatsoever), it being understood and agreed that neither City nor Agency shall be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation or maintenance of the Premises during the term of this Operation and Maintenance Agreement. The Operator shall also be responsible for obtaining and maintaining any and all governmental permits, licenses and approvals necessary or desirable with respect to the Premises. The standards of operation and maintenance of the Premises required under this Operation and Maintenance Agreement shall include those requirements set forth in Section X-B of the REA. Operator shall at all times comply with and maintain the parking spaces required under the REA and shall at all times comply with all other provisions of the REA relating to the operation and maintenance of the Premises. In the event the Operator fails to perform the management, maintenance, repair and operation of the Premises as provided herein, the City shall notify the Operator and the REA Parties in writing of such failure to perform, specifying the respects in which it considers the Operator's performance to be unsatisfactory. Upon the failure of the Operator to improve or to commence and diligently proceed to improve such performance within thirty (30) days after such notice, the City shall give the Operator and the REA Parties a second written notice of such failure to perform. Upon the failure of the Operator to improve or to commence and diligently proceed to improve such performance within fifteen (15) days after such second written notice, the REA Parties, within thirty (30) days after the date of the second notice and upon delivery of written notice to the City, shall collectively or individually have the right to enter the Premises and undertake or cause to be undertaken such management, maintenance, repair and operational activities in the manner provided in the REA. Upon the failure of the REA Parties to collectively or individually take over such management, maintenance, repair or operational activities, and in any case involving emergencies or where immediate harm to the Premises or its users is possible, the City shall have the right to enter the Premises and undertake or cause to be undertaken such management, maintenance, repair and operational activities. In such events, the Operator shall promptly upon demand reimburse the City or the performing persons or REA Parties for all reasonable costs and expenses incurred by the City or said performing persons or REA Parties for such management, maintenance, repair and operational activities.

Section 6 No Charge for Parking. The Operator shall not impose or permit the imposition of any charge for the use of the Premises without the City's consent, provided, however, that the provisions of this Section shall not apply to charges of any kind whatsoever imposed by any governmental authority on the Agency, the City, the Operator, or the users of the Premises as part of a parking management program, transportation control plan, or other governmental regulation of parking; and provided, further, that the Operator may charge and collect the payments and expenses incurred by it under this Operation and Maintenance Agreement from tenants of the Shopping Center and from the REA Parties to the extent provided

in the respective tenant leases and the REA. If the City consents to the imposition of any charge to the public for the use of the Premises, the Operator agrees that all such funds shall be used to reduce the debt on the special tax bonds in connection with the City of Sunnyvale Bond Anticipation Notes Community Facilities District No. 1 Series 1999 (the "Notes") that are being issued in part, to provide funds for the construction of the Parking Facilities. If there are no sums due and payable under the special tax bonds, any funds from parking fees charged to the public shall be used solely for reasonable operating and maintenance costs of the Parking Facilities and any funds remaining after such costs are paid for shall belong to the City.

Section 7 Additions and Improvements.

A. By the City. The City shall have the right during the term of this Operation and Maintenance Agreement, at its own expense, to make or permit to be made, any addition to or improvements to the Premises which are now or may hereafter be permitted by law, to attach fixtures, structures or signs thereto, and to place any personal property on or in the Premises. Title to all such personal property or to fixtures which may be removed without damage to the Premises shall remain in the City or in such person as may be legally entitled thereto.

B. By the Operator. With the consent of the City (which consent shall not be unreasonably withheld), the Operator and the REA Parties during the term of this Operation and Maintenance Agreement may, at their own cost and expense, make or permit to be made, any addition to or improvements to the Premises which are consistent with the REA and do not impair the utility thereof for use as parking facilities, to attach fixtures, structures or signs thereto, and place any personal property on or in the Premises, provided the utility and use of the Premises as parking facilities is not unreasonably interfered with. Title to all such personal property or to fixtures which may be removed without damage to the Premises shall remain in the Operator or in such person as may be legally entitled thereto.

Section 8 Policies and Rules. The Operator shall establish and maintain such general policies, rules and regulations for the repair, management, maintenance, operation and use of the Premises consistent with the provisions of this Operation and Maintenance Agreement, the PIADA and the REA as may be necessary and approved by the City. Such policies, rules and regulations shall be submitted to the City prior to their effective date and shall become effective thirty (30) days after the date of such delivery unless they are suspended or disapproved by action of the City Council. The initial general policies, rules and regulations of the Operator, as contained in Exhibit E of the REA, are hereby approved by the City.

Section 9 Insurance.

A. Obligations of Operator. During the term of this Operation and Maintenance Agreement, the Operator at its own cost and expense shall:

(1) Maintain or cause to be maintained in full force and effect, the following insurance covering the Premises: comprehensive public liability insurance, including coverage for any accident resulting in personal injury or death of any person and consequential

damages arising therefrom, including comprehensive property damage insurance, in the amount of \$5,000,000 with respect to bodily injury or death to any one or more persons and \$1,000,000 with respect to damage to property. Operator shall furnish to the City, on or before the effective date of any such policy, evidence that the insurance referred to in this subsection Section 9A(1) shall be in force and effect on said effective date and that the premiums therefor have been paid;

(2) Maintain or cause to be maintained, fire and extended coverage insurance (with an earthquake damage endorsement) in an amount at least equal to one hundred percent (100%) of the replacement cost (as defined below in Section 9C) of the Premises to insure against loss or damage to the Premises resulting from risks ordinarily within the classification of fire and extended coverage and specifically against the following perils: fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage. Such insurance shall be carried with financially responsible insurance companies authorized to do business in the State of California and may be carried under a policy or policies covering other property owned or controlled by the Operator or by any member of Operator; provided, that such policy or policies shall allocate to the Premises an amount not less than one hundred percent (100%) of the replacement cost thereof and shall provide that the same may not be cancelled without at least thirty (30) days prior notice to the REA Parties and the Agency. Operator shall furnish to the City prior to the effective date of any such policy, evidence that the insurance required by this subsection shall be in force and effect on said effective date and that premiums therefor have been paid;

(3) Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the Worker's Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof, such workmen's compensation insurance to cover all persons employed by Operator or the REA Parties in connection with the Premises and to cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death during or in connection with the Premises or the operation thereof by the Agency, City or Operator; and

(4) Maintain or cause to be maintained on the Premises any other insurance required by the REA or the City Lease or reasonably requested by City or Agency.

B. Definition of Term "Replacement Cost". The term "replacement cost" as used in this Section 9 shall mean the actual cost of replacing the Premises (including amounts for construction, architectural, engineering, legal and administrative fees, and inspection and supervision during construction, and the cost of restoring surface grounds owned or leased by the Agency or the City, but excluding (i) the cost of restoring trees, plants and shrubs, (ii) as to fire and extended coverage insurance, the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation, and (iii) as to earthquake insurance, the cost of foundation, footings and excavation using the items of value set forth parenthetically above. Said replacement cost shall be determined from time to time (but not less frequently than once in

every thirty-six (36) months) either by an appraisal by an insurance company providing insurance covering the destruction of the Premises or by an appraiser selected by the City and approved by the Operator.

C. General Provisions. All insurance provided under this Section 9A shall be for the benefit of the Operator, Agency and City as named insureds and shall be primary insurance.

All insurance provided under Section 9A hereof shall be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation.

All insurance provided under Section 9B hereof shall be for the benefit of the Agency, the City and the Operator, as named insureds and shall be primary insurance. Adjustment of any losses shall be made by the Agency or City in consultation with Operator.

All insurance herein provided for under this Section 9B hereof shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California.

All policies or certificates issued by the respective insurers for insurance shall provide that such policies or certificates shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to the Operator, the RBA Parties, the City, the Treasurer of the Agency, and the Trustee or Fiscal Agent for the Agency's. Copies of such policies or certificates shall be deposited with the City, the Treasurer of the Agency, and the Trustee or Fiscal Agent for the Agency's bonds, together with appropriate evidence of payment of the premiums therefor; and, at least thirty (30) days prior to expiration dates of expiring policies or contracts held by said Treasurer and said Trustee or Fiscal Agent, copies of renewal or new policies or contracts or certificates shall be deposited with said Treasurer and said Trustee or Fiscal Agent.

All proceeds of insurance with respect to loss or damage to the Premises during the term shall be paid to the City to be applied as provided in Section 10 hereof.

Section 10 Damage to the Premises. In the event that the Premises are damaged by fire or other casualty or event during the term of this Agreement, Operator shall repair such damage and restore the Premises with diligence and in a good and workmanlike manner, and otherwise in accordance with the requirements of the REA (including Section XIII-G thereof) and the City Lease. Operator shall be entitled to use the insurance proceeds resulting from the fire or other casualty or event in connection with such repair or restoration.

Section 11

Assignment of Operation and Maintenance Agreement.

A. Prohibited. Neither this Operation and Maintenance Agreement nor any interest of the Operator herein shall, at any time after the date hereof, without the prior written consent of the City (which consent the City agrees not to unreasonably withhold), be mortgaged, pledged, assigned or transferred by the Operator by voluntary act or by operation of law, or otherwise, except as provided herein and in Section X-H of the REA. Notwithstanding the foregoing, Operator may make any mortgage, pledge, assignment or transfer of the Operator's interest under this Operation and Maintenance Agreement (but not of this Operation and Maintenance Agreement itself or any interest of the Agency or City herein or in the Premises) required for any reasonable and customary method of construction or permanent financing of the Operator's Shopping Center land and improvements without the City's consent, provided that no additional obligation or burden is imposed on the Agency or the City as a result thereof; and provided, further, that all rights acquired under any such mortgage, pledge, assignment or transfer shall be subject to each and all of the covenants, conditions and restrictions set forth in this Operation and Maintenance Agreement, and to all rights and interests of the Agency and the City herein, none of which covenants, conditions or restrictions is or shall be waived by the City by reason of giving its consent hereunder. Operator shall give Agency and City written notice of any such mortgage, pledge, assignment or transfer together with a written representations by the Operator that the provisions of this Section 11A. are not violated. The Operator shall at all times remain liable for the performance of the covenants and conditions on its part to be performed, notwithstanding any assigning, transferring or subletting which may be made.

B. Designation of Operator. The City recognizes that the REA provides therein for the management, maintenance, operation and repair of the Premises by the "Operator" (as said term is defined in the REA, the initial "Operator" under the REA is the Operator under this Operation and Maintenance Agreement). The REA further provides that upon the occurrence of certain events a successor to the Operator may be appointed to undertake such management, maintenance, operation and repair of the Premises. In the event such successor is so appointed in accordance with the terms of the REA, the Agency hereby agrees to accept performance by such successor of such management, maintenance, operation and repair without relieving the Operator hereunder of its liability unless the Agency shall have expressly approved in writing the financial capability and responsibility of the successor Operator.

C. City's Assignment. If the Facility Lease is no longer in full force and effect, the City shall have the sole and absolute right to assign this Operation and Maintenance Agreement to the Agency.

Section 12

Eminent Domain. If the whole of the Premises or any part thereof shall be taken under the power of eminent domain or sold to any governmental agency threatening to exercise the power of eminent domain, the provisions of Section XVI of the REA shall govern. In implementation of Section XVI of the REA, insofar as it may pertain under this Operation and Maintenance Agreement, the Agency and Operator agree:

A. Complete Taking. If the whole of the Premises, or so much thereof as to (i) render the remainder unusable for parking purposes or (ii) cause the REA to terminate pursuant to Section XVI-D thereof, shall be taken under the power of eminent domain or sold to any governmental agency threatening to exercise the power of eminent domain, then this Operation and Maintenance Agreement may be terminated by Operator or City. For purposes of this Section 12, the Premises shall be considered unusable for parking purposes if, after the taking in condemnation, the number of parking spaces in the Premises is reduced to less than seventy-five percent (75%) of the number of such spaces existing prior to such taking.

B. Partial Taking. If less than the whole of the Premises shall be taken under the power of eminent domain or sold to any governmental agency threatening to exercise the power of eminent domain and Operator and City do not elect to terminate this Operation and Maintenance Agreement pursuant to Section 12A hereof, this Operation and Maintenance Agreement will continue.

C. Operator's Right to Restore. If this Agreement is not terminated pursuant to Section 12A hereof, the Operator shall undertake, at its sole expense, to restore or rebuild the Premises or portion thereof not taken by eminent domain pursuant to plans and specifications approved by the City. If it restores or rebuilds the Premises pursuant to this subsection C, the Operator shall be entitled to use proceeds from any eminent domain award, to the extent that such proceeds may lawfully be paid to Operator for such purpose.

D. Award. Any award made in eminent domain proceedings for the taking or damaging of the Premises in whole or in part, or any proceeds received from the sale thereof, shall be applied to the restoration of the Premises to the extent that such restoration is required pursuant to this Operation and Maintenance Agreement. To the extent that restoration is not required pursuant to this Operation and Maintenance Agreement, any award made to the Agency or the City shall be paid to the Agency, the Agency's Trustee or Fiscal Agent if required by any bonds, or such proceeds shall be paid to the City. The Operator shall have no interest in or thereto and shall not be entitled to such part of the award; provided, however, that nothing herein shall prevent the Operator or the REA Parties and those claiming under or through the Operator or the REA Parties from separately claiming any damages against the condemning agency which may be lawfully claimed by the Operator, the REA Parties or such persons without reducing the amount of the award payable to City, Agency or Agency's Trustee or Fiscal Agent, by reason of damage to or taking of property of the Operator, the REA Parties or such persons, including, without limitation, their interests under this Operation and Maintenance Agreement as the same may appear.

Section 13 Surrender. Upon the termination of this Operation and Maintenance Agreement, the Operator agrees that it shall surrender to the City the Premises in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance except for reasonable wear and tear, and except for any damage to the Premises caused by casualty or by a taking as a result of eminent domain proceedings.

Section 14 Liens. The Operator agrees to pay, when due, all sums of money that may become due for, or purporting to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for the Operator in, upon or about the Premises and which may be secured by mechanics', materialmen's or other liens against the Premises, and/or the interests of the City or Agency therein or which relate to taxes on the Premises and any protests thereof, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by such lien matures and/or becomes due; provided, however, that if Operator desires to contest any such lien, it may do so upon providing the City with a bond or other lawful security such as a guarantee, in form and amount satisfactory to the Agency, to guarantee payment of such lien and provided, further, that notwithstanding any such contest, if any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, then and in such event the Operator shall forthwith pay and discharge said judgment.

Section 15 Law Governing. This Operation and Maintenance Agreement shall be governed by the laws of the State of California, subject to the waivers, exclusions and provisions herein contained.

Section 16 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

Agency - THE REDEVELOPMENT AGENCY OF THE
 CITY OF SUNNYVALE
 650 West Olive Avenue
 Sunnyvale, California 94086
 Attention: Director of Finance and
 Executive Director of the Agency

Operator - SUNNYVALE, LLC
 c/o American Mall Properties, LLC
 15303 Ventura Boulevard, Suite 1520
 Sherman Oaks, CA 91403
 Attention: Tony Quintero

or at such other address as either party shall later designate for such purpose by written notice to the other party.

Section 17 Waiver. The waiver by either party of any breach by the other of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 18 Default by Operator. If (a) the Operator shall fail to observe or perform any term, covenant or condition contained herein for a period of sixty (60) days after written notice thereof from the City to the Operator, or (b) the Operator shall abandon or vacate the Premises, or (c) the Operator's interest in this Operation and Maintenance Agreement or any part hereof shall be assigned or transferred without the written consent of the City, either voluntarily or by operation of law, except as permitted hereunder, or (d) the Operator shall file any petition or institute any proceedings wherein or whereby the Operator asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to the Operator's creditors to effect a composition or extension of time to pay the Operator's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the Operator's debts, or for any other similar relief, then and in any of such events, the Operator shall be deemed to be in default hereunder.

If the Operator should, after notice of such default, fail to remedy any default or commence the correction thereof within sixty (60) days after such notice, or thereafter fails to diligently pursue such correction to completion, then the City shall have the right, at its option, without any further demand or notice:

(i) to terminate this Operation and Maintenance Agreement and to re-enter the Premises and eject all parties in possession therefrom, in which case this Operation and Maintenance Agreement shall terminate, and the Operator shall have no further claim hereunder; or

(ii) to continue this Operation and Maintenance Agreement in effect, in which case it may enforce all of its rights and remedies hereunder.

In the event the City terminates this Operation and Maintenance Agreement as hereinabove provided, the City shall be entitled to pursue all rights and remedies available at law or in equity.

The foregoing remedies of the City are in addition to and not exclusive of any other remedy of the City. Any such re-entry as provided in Section 18(i) above shall be allowed by the Operator without hindrance and the City shall not be liable in damages for such re-entry or be guilty of trespass.

Section 19 Rights of Others to Cure Default by Operator.

A. By Parties to the REA.

(1) The City shall, upon serving the Operator with any notice of default under this Operation and Maintenance Agreement, simultaneously serve a copy of said notice upon each of the other parties to the REA at the last address designated by said party

pursuant to the REA. Each of said REA Parties shall thereupon have fifteen (15) days more time than is given to the Operator to cure any such default or commence the correction thereof in accordance with the terms of this Operation and Maintenance Agreement, and the City shall accept such performance by or at the instigation of the other parties to the REA, or any of them, as if the same had been done by the Operator.

(2) Anything herein contained notwithstanding, while the REA remains in effect, if any event or events of default shall occur which, under the provisions of this Operation and Maintenance Agreement shall entitle City to terminate this Operation and Maintenance Agreement, City shall give Operator and each of the other parties to the REA written notice of City's election to terminate this Operation and Maintenance Agreement and if before the expiration of twenty (20) days from the date of service of said termination notice the other parties to the REA, or any of them, shall have paid to City all sums due, plus interest thereon at seven percent (7%) from the due date, shall have paid to the proper governmental authorities all taxes and assessments that may then be due, including any and all delinquency payments, late charges and interest, shall have made all payments of insurance premiums on policies required under this Operation and Maintenance Agreement, and shall have made such other payments of money as required in this Operation and Maintenance Agreement which are then in default and within the time period specified in this Operation and Maintenance Agreement as extended hereby, and shall have taken or proceeded to take all reasonably practicable steps in order to perform all the other requirements of this Operation and Maintenance Agreement, if any, which are then in default, then in such event City shall not be entitled to terminate this Operation and Maintenance Agreement and any notice of termination theretofore given shall not result in a cancellation of this Operation and Maintenance Agreement and shall be of no further force and effect.

B. By Operator's Mortgagee.

(1) The City shall, upon serving the Operator with any notice of default under this Operation and Maintenance Agreement, simultaneously serve a copy of said notice upon any mortgagee or secured lender of Operator (as referred to in Section 11 of this Operation and Maintenance Agreement) at the last address designated by said mortgagee or lender to the City in writing. Unless the other parties to the REA, or any of them, shall first have cured any such default or shall have commenced the correction thereof as provided in Section 21A, said mortgagee or secured lender shall thereupon have fifteen (15) more days time than is given to the other parties to the REA under Section 21A to cure any such default or commence the correction thereof in accordance with the terms of this Operation and Maintenance Agreement, and the City shall accept such performance by or at the instigation of said mortgagee or secured lender as if the same had been done by the Operator.

(2) Anything herein contained notwithstanding, while such mortgagee or secured lender (as referred to in Section 11 of this Operation and Maintenance Agreement) remains unsatisfied of record, if an event or events of default shall occur, which under any provision of this Operation and Maintenance Agreement shall entitle the City to terminate this Operation and Maintenance Agreement, and if before the expiration of thirty (30) days of the

date of service of said notice, such mortgagee or secured lender shall have paid to the City all payments herein provided for, and then in default, and to the extent reasonably practicable shall have complied or shall have engaged in the work of complying with all of the other requirements of this Operation and Maintenance Agreement within the extended time limits prescribed herein, if any are then in default, then in such event the City shall not be entitled to terminate this Operation and Maintenance Agreement and any notice of termination theretofore given shall be void and of no effect.

(3) If the City shall elect to terminate this Operation and Maintenance Agreement by reason of any default of the Operator, such mortgagee or secured lender shall not only have and be subrogated to any and all rights of the Operator with respect to curing such default, but shall also have the right to postpone and extend the specified date for the termination of this Operation and Maintenance Agreement as fixed by the City in its notice of termination, for a period of not more than six (6) months, provided such mortgagee or secured lender shall cure or cause to be cured any then existing monetary defaults and to the extent reasonably practicable comply with and perform all of the other terms, conditions and provisions of this Operation and Maintenance Agreement on the Operator's part to be complied with and performed, and if no further monetary defaults shall occur hereunder during such extended period, and said mortgagee or secured lender shall forthwith take steps to acquire the Operator's interest herein, the time in which said mortgagee or secured lender must comply with the provisions of this Section shall be extended for such period as shall be necessary to complete such steps with due diligence and continuity, provided that during any such extensions no further monetary default by the Operator or its mortgagee or secured lender shall be permitted to continue hereunder.

(4) The City agrees within ten (10) days after the request in writing by the Operator or such mortgagee or secured lender, to furnish the party requesting same with a written statement duly acknowledged of the fact that this Operation and Maintenance Agreement is in full force and effect and that there are no defaults hereunder by the Operator, if such is the fact. If the City is aware of any defaults hereunder at the time, the City agrees that in such statement it will specify the particular default or defaults which the City claims to exist.

(5) The City agrees that in the event of termination of this Operation and Maintenance Agreement by reason of any default by Operator, the holder of any mortgage or trust deed permitted under Section 11 of this Operation and Maintenance Agreement or its nominee (the mortgagee or trustee) shall be entitled to enter into a new Operation and Maintenance Agreement of the Premises as the new Operator with all of the rights and obligations of the Operator hereunder for the remainder of the term, which new Operation and Maintenance Agreement shall be effective as of the date of such termination, and shall be upon the terms, provisions, covenants and agreements as herein contained and subject only to the same conditions of title as this Operation and Maintenance Agreement is subject on the date of the execution hereof, and to the rights, if any, of any parties then in possession of any part of the Premises, provided:

(a) Said mortgagee shall make written request upon the City for such new Operation and Maintenance Agreement within thirty (30) days after the date of such termination and such written request is accompanied by payment to the City of sums then due to the City under this Operation and Maintenance Agreement.

(b) Said mortgagee shall pay to the City at such time of execution of the new Operation and Maintenance Agreement any and all sums which would at such time be due under this Operation and Maintenance Agreement but for such termination and in addition thereto any expenses including attorneys' fees which the City necessarily shall have paid by reason of such default.

(c) Said mortgagee or its nominee shall to the extent reasonably practicable perform and observe all covenants herein contained on the Operator's part to be performed and shall further remedy any other conditions which the prior Operator was obligated to perform under the terms of this Operation and Maintenance Agreement.

The Operator, under such substitution, shall have the same right, title and interest in and to the Premises as the Operator had under this Operation and Maintenance Agreement.

(6) As used in this Operation and Maintenance Agreement, all reference to a "mortgage" shall be deemed to include a deed of trust, and all reference to the "holder" of a mortgage or to a "mortgagee" shall be deemed to include the beneficiary and/or trustee under a deed of trust.

Section 20 Right of Agency to Cure Default by City. Notwithstanding anything herein to the contrary, Operator agrees that the Agency shall have the right to cure any default of the City under this Operation and Maintenance Agreement and thereby prevent this Operation and Maintenance Agreement from terminating and, in such event, the Agency at its option shall be recognized under this Operation and Maintenance Agreement as the successor to the City and this Operation and Maintenance Agreement shall remain in full force and effect and binding upon the Operator.

Section 21 Nondiscrimination. The Operator covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Operation and Maintenance Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, or ancestry, in the leasing, subleasing, transferring, use, or enjoyment of the Premises herein operated nor shall the Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the Premises herein operated.

The foregoing conditions shall not create any rights in Operator that are not otherwise expressly set forth herein.

Section 22 Indemnification. The City and the Agency shall not be liable at any time for any loss, damage, or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Operator, or of anyone holding under the Operator or the occupancy or use of the Premises or any part thereof by or under the Operator, or directly or indirectly from any state or condition of the Premises or any part thereof during the term of this Operation and Maintenance Agreement except for the intentional acts and omissions, and the gross negligence of the City or the Agency.

Notwithstanding anything to the contrary under this Operation and Maintenance Agreement, and irrespective of any insurance carried by the Operator for the benefit of the City and the Agency, the Operator agrees to protect, defend, indemnify and hold the City and the Agency and the Premises harmless from any and all damages or liabilities of whatsoever nature arising under the terms of this Operation and Maintenance Agreement or arising out of or in connection with the Premises during the term of this Agreement.

Section 23 Certain Covenants of the Operator. Without limiting Operator's other obligations hereunder, Operator shall not do, or permit or authorize others to do any of the following:

- (a) Operate or use the Premises in any manner or for any purposes other than as herein set forth;
- (b) Knowingly or intentionally engage in any act which would, to an ordinarily prudent person in the position of Operator, be reasonably foreseeable to cause material damage to the Premises;
- (c) Abandon the Premises during the term of this Agreement;
- (d) Knowingly use or occupy, or knowingly permit the Premises or any part thereof to be used or occupied, for any unlawful, disreputable or ultra-hazardous use (including the prohibited or unauthorized use, storage or disposal of hazardous material), or operate or conduct the business of the Premises in any manner known to constitute or give rise to a nuisance of any kind;
- (e) Make, authorize or permit any material modifications or alterations to the Premises except as expressly authorized by this Agreement;
- (f) Do anything inconsistent with, or that will cause a default under the City Lease or the REA; or
- (g) Enter into or amend any contract or agreement affecting the Premises that conflicts in any material respect with the terms of this Agreement or that does not contain an express provision that it will terminate automatically upon the expiration or earlier termination of this Agreement.

Section 24 Attorneys' Fees and Court Costs. In the event that either the City or the Operator shall bring or commence an action to enforce the terms and conditions of this Operation and Maintenance Agreement or to obtain damages against the other party arising from any default under or violation of this Operation and Maintenance Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

Section 25 Execution. This Operation and Maintenance Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Operation and Maintenance Agreement, and it is also understood and agreed that separate counterparts of this Operation and Maintenance Agreement may be separately executed by the City and the Operator, all with the same force and effect as though the same counterpart had been executed simultaneously by both the City and the Operator.

Section 26 Validity. If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Operation and Maintenance Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions and option provisions of this Operation and Maintenance Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 27 Binding Effect. This Operation and Maintenance Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 28 No Lease. This Operation and Maintenance Agreement (i) is not a lease and does not grant Operator any real property rights in the Premises, and (ii) shall not make Operator an agent for the City or Agency.

Section 29 Estoppel Certificate. Within ten (10) days after delivery of a written request from the City to the Operator, the Operator shall execute and deliver to the City an estoppel certificate certifying as to such facts with regard to this Operation and Maintenance Agreement and the Premises as the City may reasonably request from time to time.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Operation and Maintenance Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

THE REDEVELOPMENT AGENCY OF THE
CITY OF SUNNYVALE

By: Robert S. LaSala

Name: Robert S. LaSala

Its: Executive Director

ATTEST:

Shirley Stas
Agency Clerk

APPROVED AS TO FORM:

Cherie A. Damento
Agency Counsel

SUNNYVALE, LLC,
a California limited liability company

By: American Mall Properties, LLC,
a California limited liability company

By: _____

Name: _____

Its: _____

IN WITNESS WHEREOF, the parties hereto have caused this Operation and Maintenance Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

THE REDEVELOPMENT AGENCY OF THE
CITY OF SUNNYVALE

By: _____

Name: _____

Its: Executive Director

ATTEST:

Agency Clerk

APPROVED AS TO FORM:

Agency Counsel

SUNNYVALE, LLC,
a California limited liability company

By: AMP Sunnyvale, LLC.
a California limited liability company

By:  _____

Name: Leonard F. Lebowitz

Its: Managing Member

By:  _____

Tony Quintero
Managing Member

Date: April 10, 2000

EXHIBIT A

Legal Description of Parcel E

LEGAL DESCRIPTION
OF
PARCEL E

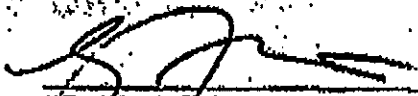
REAL PROPERTY IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED
AS FOLLOWS:

~~BEING A PORTION OF PARCEL 2 AND A PORTION OF PARCEL 3, AS SHOWN ON THE
PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA
COUNTY ON AUGUST 28, 1991, IN BOOK 630 OF MAPS, AT PAGE 6 AND BEING MORE
PARTICULARLY DESCRIBED AS FOLLOWS:~~

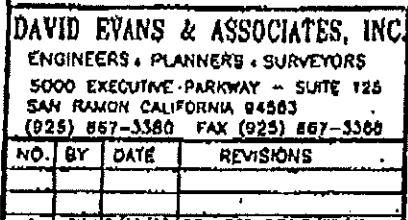
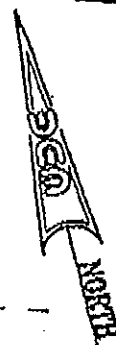
COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2, SAID POINT OF
COMMENCEMENT BEING A POINT ON THE NORTHERLY LINE OF IOWA AVENUE, AND
BEING ALSO THE SOUTHEASTERLY CORNER OF PARCEL 3, AS SHOWN ON SAID PARCEL
MAP; THENCE NORTH 14°52'00" WEST, 53.02 FEET ALONG THE WEST LINE OF SAID
PARCEL 2 TO THE POINT OF BEGINNING; THENCE LEAVING SAID WEST LINE, NORTH
75°08'00" WEST, 101.25 FEET; THENCE NORTH 14°51'10" EAST, 250.00 FEET; THENCE
SOUTH 75°08'00" EAST, 101.31 FEET TO THE SAID WEST LINE OF PARCEL 2; THENCE
NORTH 14°52'00" EAST, 17.99 FEET ALONG SAID WEST LINE; THENCE LEAVING SAID
WEST LINE SOUTH 75°08'50" EAST, 207.73 FEET; THENCE NORTH 14°51'10" EAST, 20.00
FEET; THENCE SOUTH 75°08'50" EAST, 68.44 FEET TO A LINE PARALLEL WITH AND FIVE
FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM THE EAST LINE OF SAID PARCEL
2; THENCE SOUTH 14°51'10" WEST, 20.00 FEET ALONG SAID PARALLEL LINE; THENCE
LEAVING SAID PARALLEL LINE, NORTH 75°08'50" WEST, 48.44 FEET; THENCE SOUTH
14°51'10" WEST, 268.05 FEET; THENCE NORTH 75°08'00" WEST, 227.80 FEET TO THE POINT
OF BEGINNING.

CONTAINING AN AREA OF 2.01 ACRES MORE OR LESS.

END OF DESCRIPTION.


CRAIG MATSUEDA P.L.S. 6820
EXPIRATION 9-30-2000





DRAWN BY: CKM	DATE: 6/9/82
CHECKED BY:	SCALE: 1"=10'
JOB NO. AMW0001	
REF. 0:\PROJECT\AMW0001\SURVEY\CMC007.DWG	
DWG. LOC. 0:\P\SDSK\AMW0001\PLAT1.DWG	
SHEET 1	OF 1
A.P.N. 209-034-008	

EXHIBIT B

Legal Description of Parcel F

LEGAL DESCRIPTION
OF
PARCEL F

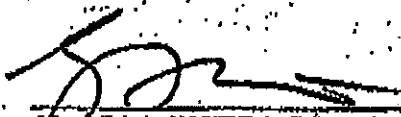
REAL PROPERTY IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED
AS FOLLOWS:

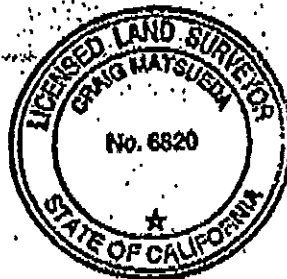
BEING A PORTION OF PARCEL 1, AS SHOWN ON THE PARCEL MAP FILED IN THE OFFICE
OF THE COUNTY RECORDER OF SANTA CLARA COUNTY ON JULY 3, 1978, IN BOOK 421 OF
MAPS, AT PAGE 46 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

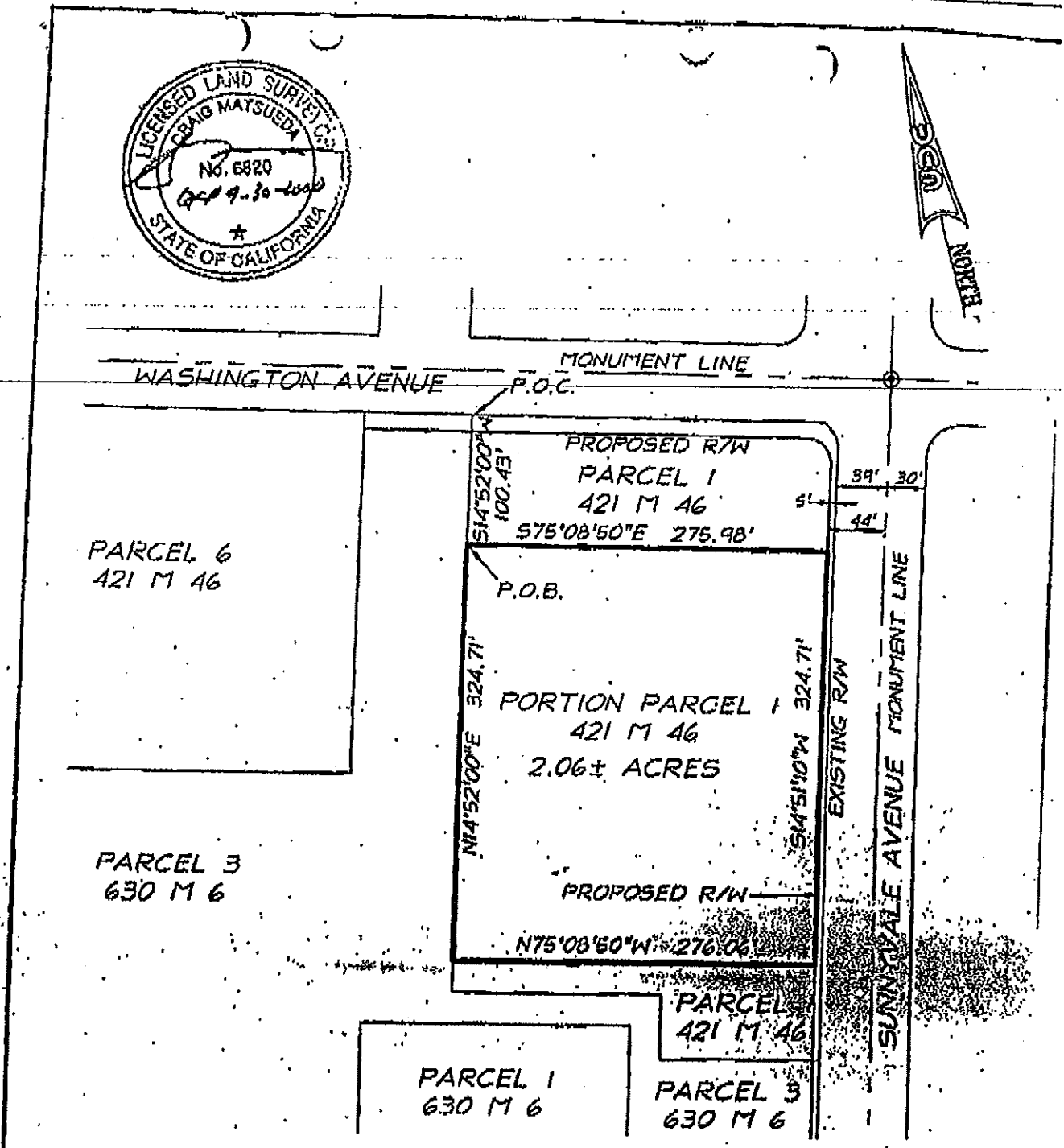
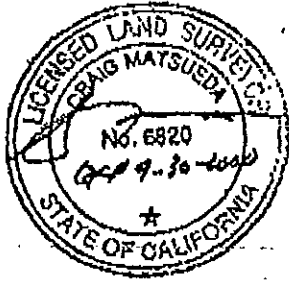
COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL 1, SAID POINT OF
COMMENCEMENT BEING A POINT ON THE SOUTHERLY LINE OF WASHINGTON AVENUE,
AND BEING ALSO THE NORTHEASTERLY CORNER OF PARCEL 3, AS SHOWN ON THE
PARCEL MAP FILED IN THE OFFICE OF THE COUNTY RECORDER OF SANTA CLARA
COUNTY ON AUGUST 28, 1991, IN BOOK 630 OF MAPS, AT PAGE 6; THENCE SOUTH
14°52'00" WEST, 100.43 FEET ALONG THE WEST LINE OF SAID PARCEL 1 TO THE POINT OF
BEGINNING; THENCE LEAVING SAID WEST LINE, SOUTH 75°08'50" EAST, 275.98 FEET TO A
LINE PARALLEL WITH AND FIVE FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM
THE EAST LINE OF SAID PARCEL 1; THENCE SOUTH 14°51'10" WEST, 324.71 FEET ALONG
SAID PARALLEL LINE; THENCE LEAVING SAID PARALLEL LINE, NORTH 75°08'50" WEST,
276.06 FEET TO THE SAID WEST LINE OF PARCEL 1; THENCE NORTH 14°52'00" EAST, 324.71
FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 2.06 ACRES MORE OR LESS.

END OF DESCRIPTION.


CRAIG MATSUEDA P.L.S. 6820
EXPIRATION 9-30-2000





DAVID EVANS & ASSOCIATES, INC.
 ENGINEERS • PLANNERS • SURVEYORS
 5000 EXECUTIVE PARKWAY - SUITE 125
 SAN RAMON CALIFORNIA 94583
 (925) 867-3380 FAX (925) 867-3388

NO.	BY	DATE	REVISIONS

PARCEL F

DRAWN BY: CKM	DATE: 6/9/97
CHECKED BY:	SCALE: 1"=100'
JOB NO. AWP0001	
REF. C:\PROJECT\AWP0001\SURVEY\COMDOK.K	
DWG. LOC. D:\P\505K\AWP0001\PLA\1.DWG	
SHEET 1	OF 1
A.P.N. 209-034-008 PORTION	